BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

ORIGINAL

In the Matter of	)	
	)	
Amendment of Part 90 of the	)	PR Docket No. 93-144
Commission's Rules to Facilitate	)	RM-8117, RM-8030,
Future Development of SMR Systems	)	RM-8029
in the 800 MHz Frequency Band	)	
and		
Implementation of Section 309(j)	)	
of the Communications Act -	)	PP Docket No. 93-253
Competitive Bidding	)	
800 MHz SMR	)	

DOCKET FILE COPY ORIGINAL

To: The Commission

MOTION TO ACCEPT SUPPLEMENTAL REPLY COMMENTS OF THE AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC. ON THE FURTHER NOTICE OF PROPOSED RULE MAKING

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

By: Alan R. Shark

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April 9, 1996

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	)	
Implementation of Sections 3(n) and 332	)	GN Docket No. 93-252
of the Communications Act	)	
Regulatory Treatment of Mobile Services	)	
	)	
Implementation of Section 309(j)	)	
of the Communications Act -	)	PP Docket No. 93-253
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To: The Commission

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1. The American Mobile Telecommunications Association ("AMTA" or "Association"), pursuant to Sections 1.41 and 1.415(d) of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully requests that the Commission accept the Association's supplemental Reply Comments in the above-entitled proceeding.[1/] The Association recognizes that much of the Specialized Mobile Radio ("SMR") service industry, and the Commission itself, are eager to finalize the matters addressed in this rule making. The SMR community already has been substantially, competitively disadvantaged because of the regulatory uncertainty in which it has existed for the past few years.

[1/] First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, PR Docket No. 93-144, rel. Dec. 15, 1995 ("Order").

Nonetheless, as described herein, the number and novelty of the issues raised in this phase of this unusually complex proceeding, as well as the extraordinary circumstances since the release of the Order, dictate the need for the acceptance of the attached supplemental Reply Comments.

2. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band. These members provide commercial wireless services throughout the country. Many of them are vitally interested in all aspects of the 800 MHz regulatory environment, and, in particular, in the fundamental restructuring of the 800 MHz regulatory framework proposed herein. AMTA has been actively involved in all phases of this proceeding, and, in fact, filed the Petition for Rule Making proposing geographic licensing procedures for the 800 MHz SMR service which was the genesis of this rule making. Thus, the Association has a significant interest in the outcome of this proceeding.

3. The Order is a lengthy and substantially interrelated document. In it the FCC has endeavored to "strike a fair and equitable balance between the competing interests of 800 MHz SMR licensees seeking to provide local service and those desiring to provide geographic area service." Order at ¶ 2. The complexity of achieving that objective is reflected in the interrelationship between matters decided in the First Report and Order ("1st R&O") segment which addresses the so-called "upper" 10 MHz of 800 MHz SMR spectrum for which the FCC has adopted a geographic licensing structure based on Department of Commerce Bureau of Economic Analysis Economic Areas ("EAs") and the issues raised in the 2nd FNPR which deal both with certain final aspects of the EA licensing framework and with the FCC's licensing

proposal for the "lower" 80 SMR channels and the 150 channels reclassified from the General Category to the SMR service.

4. As the Commission is aware, AMTA recently reached an agreement with SMR-WON and Nextel Communications, Inc. which resulted in the submission of Joint Reply Comments on March 1, 1996. The Joint Reply Comments focused on the consensus reached by diverse segments of the 800 MHz SMR industry for the licensing framework for the "lower 230" channels. By necessity its focus was a broad one.

5. There remain a small number of limited issues which were not addressed in the consensus plan and which have not been addressed by most participants in the proceeding. The attached supplemental Reply Comments address these matters.

6. The FCC and the SMR industry have devoted over two years to deliberating the proposed regulatory structure for the 800 MHz SMR spectrum. While AMTA does not support any regulatory delay that would further disadvantage SMR providers in the increasingly competitive wireless marketplace, the Association also is committed to ensuring that all segments of the SMR industry operate within a licensing environment that promotes system growth and competitive opportunities. To that end the Association has prepared its supplemental Reply Comments reflective of the best interests of the collective industry.

7. For the reasons described above, AMTA urges the Commission to accept its supplemental Reply Comments in the above-entitled proceeding.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 9th day of April, 1996, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Motion to Accept Supplemental Reply Comments to the following:

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Washington, DC 20554

* Commissioner Rachelle B. Chong
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* Commissioner Susan Ness
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1. The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits supplemental Reply Comments in the above-entitled proceeding.[1] These supplemental Comments address three matters raised in the Notice which the Association identified in its earlier-filed Comments as requiring further industry deliberation. AMTA advised the FCC that it would provide additional input on these issues at a later date, and is doing so in the instant supplemental Reply Comments. The three areas are the financial cap which should be used to define eligibility for participation in any lower channel 800 MHz EA license entrepreneur's block auctions, the

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[1] Second Further Notice of Proposed Rule Making, PR Docket 93-144, FCC 95-501, rel. Dec. 15, 1995 ("Notice").

appropriate coverage and construction requirements for lower channel EA licensees, and the appropriate entities to act as arbiters in the event Alternative Dispute Resolution ("ADR") is invoked to resolve disputes relating to the upper channel relocation process.

2. AMTA has already submitted comments in all phases of this proceeding. The Association recently joined with Nextel Communications, Inc. and SMR Won in submitting Joint Reply Comments which outlined a consensus industry plan for resolution of many of the complex matters at issue in this rulemaking. In that filing, the Joint Commenters stressed that their support for the FCC's regulatory framework for the 200 upper 800 MHz SMR channels was predicated on adoption of the consensus position regarding disposition of the lower 80 SMR and General Category channels. The supplemental recommendations herein relate to facets of the FCC's 800 MHz proposal which were not discussed in the consensus plan, and which have not been addressed by most participants in the proceeding.

I. THE FCC SHOULD ADOPT A $50M FINANCIAL CAP FOR LOWER CHANNEL EA ENTREPRENEURS' BLOCK ELIGIBILITY.

3. In the Notice, the FCC tentatively concluded that the lower 80 and General Category channels should be designated as an entrepreneurs' block. Notice at ¶ 398. The Commission noted that it had adopted financial caps based on gross revenues and total assets over a specified period of time when establishing its broadband PCS entrepreneurs' block rules, and sought comment on the appropriate financial cap for the less capital-intensive 800 MHz SMR service.

4. The record in this proceeding is essentially silent on this aspect of the FCC's proposal. While many parties supported the special provisions proposed for small business bidding credits and installment payments, Notice at ¶¶ 391-3 and 397, most commenters failed

to recommend a financial cap for entrepreneurs' block eligibility. Rather, they apparently assumed that the larger of the tiered small business definitions proposed in the Notice would also be used to determine basic eligibility to apply for these channels, although using that standard would effectively obviate any advantage of qualifying for the second level of small business credits.

5. In their Joint Reply Comments, AMTA and the other participating entities recommended a process by which incumbent licensees could secure EA licenses on a channel-by-channel basis pursuant to market settlements which would result in the submission of a single, and thus non-mutually exclusive, application for the frequency. All incumbents would be permitted to participate in that settlement process, irrespective of their size. EA licenses would be awarded by competitive bidding only when incumbents did not come to agreement or when there was no incumbent on a frequency in an EA. In those instances, the Joint Reply Comments supported adoption of an entrepreneurs' block for any remaining frequencies in the lower 80 SMR pool and one of the recommended three fifty-channel General Category blocks. However, the consensus position did not comment on the appropriate cap for 800 MHz SMR entrepreneurs' block eligibility.

6. AMTA recommends that the FCC adopt a $50M entrepreneurs' block financial cap. This figure is substantially lower than the qualifying number used for the PCS service, a distinction that recognizes the difference in capital requirements for the two services. It reflects a reasonable balance between preserving opportunities for smaller entities while recognizing that there are also larger incumbents which already have substantial operations, and thus financial investments, in these bands. In light of the proposed affiliation and attribution rules used to

determine an entity's revenues and assets, as well as the need for sufficient resources to implement a system capable of satisfying the FCC's construction/coverage requirements, a $50M cap is appropriate.

II. SYSTEM COVERAGE AND CONSTRUCTION REQUIREMENTS SHOULD ENSURE PROMPT, INTENSIVE UTILIZATION OF SPECTRUM.

7. The Notice sought comment on the appropriate coverage and construction requirements for lower channel EA licenses. Notice at ¶ 312. It tentatively proposed to apply to this spectrum the same standards adopted for both 900 MHz SMR and the upper channel 800 MHz SMR EA authorizations: the licensee would be required to provide coverage to one-third of the population in the EA within three years of initial license grant and to two-thirds of the population by the end of their five-year construction period. The FCC indicated that these coverage requirements were intended to serve the public interest by deterring spectrum warehousing and promoting the prompt delivery of SMR service to the public.

8. AMTA fully supports both of the FCC's objectives. The Association has consistently endorsed stringent construction standards for precisely those reasons. In fact, AMTA recommends that the FCC adopt a more accelerated construction requirement than that proposed for licensees awarded lower channel EA multi-frequency block authorizations through the auction process. The Association supports adoption of a requirement that lower EA auction winners provide coverage to two-thirds of the EA population within twelve months after grant. In light of the heavily encumbered nature of this spectrum, it is imperative that parties acquiring such licenses demonstrate both the intention and the ability to provide a viable service on this spectrum without violating the co-channel protection rights guaranteed to incumbent licensees. The very significant differences in levels on incumbency between these bands and the 900 MHz

SMR and PCS services support a more demanding construction standard. Absent a stringent construction requirement, the Commission cannot be assured that spectrum is not being warehoused for anti-competitive purposes or that the public will be served on a timely basis.

9. By contrast, when lower channel EA licenses are granted on a frequency-by-frequency basis pursuant to a settlement process among incumbent licenses, this level of FCC oversight will be unnecessary. Given the existing degree of incumbency on these bands, the parties participating in the settlement process likely already provide service in excess of the proposed requirement. The settlement arrangement itself is likely to include provisions whereby the parties agree how they intend to expand coverage to any underserved or unserved portion of the EA. Thus, when only minimal amounts of "white space" are at issue and when the licensees are already providing service to the public on the channel in question, the FCC can be confident that its policy objectives already have been satisfied.

III. INDUSTRY TRADE ASSOCIATIONS SHOULD NOT ACT AS ALTERNATIVE DISPUTE RESOLUTION ARBITERS.

10. The Commission has recommended and AMTA, as well as most commenting parties, has supported the use of expedited alternative dispute resolution ("ADR") procedures, including binding arbitration or mediation, to resolve disputes relating to relocation negotiations between upper channel incumbents and EA licensees. Notice at ¶ 277. The Notice also requested comments on whether industry trade associations or the FCC's Compliance and Information Bureau should act as arbiters for this purpose. Notice at ¶ 278.

11. In its Comments, AMTA expressed tentative support for designating trade associations to perform that function, but advised the FCC that it was still considering the matter. Having reviewed the record in this proceeding, AMTA now believes that the FCC

should not designate trade associations as arbiters. Instead, it recommends that the Commission utilize the services of parties available through the American Arbitration Association of ("AAA") or rely on internal agency resources.

12. The likelihood of successful use of ADR is highly dependent not only on the actuality of an unbiased arbiter, but on the perception that the arbiter is entirely neutral. Although AMTA believes that its expertise could prove extremely valuable in resolving disputed relocation matters, the record evidences a significant industry concern about permitting trade associations to act in that capacity. A number of parties have indicated that they perceive member-based trade associations as unable to consider such situations impartially.[2] While AMTA is confident that it and other associations would be fully capable of neutral evaluation of such matters, irrespective of the parties involved, it is apparent that trade association involvement would create a perception of bias for many industry participants. Because that perception could undermine the ADR process, and reduce industry reliance on it, AMTA urges the Commission to utilize FCC employees and/or professional arbiters recommended by AAA in this capacity.

IV. CONCLUSION

13. For the reasons described above, AMTA urges the Commission to adopt rules in this proceeding consistent with the comments herein.

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[2] See, e.g., Comments of Sierra Electronics, Digital Radio, L.P. and SMR Systems, Inc.

CERTIFICATE OF SERVICE

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